

These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>

Planning & Zoning Commission Meeting
Minutes of May 7, 2014
1st Floor North Conference Room - City Hall

Present: Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner (recused from meeting at 7:30 p.m.), Kristy Carter, Jim Edmonds and Karl Koon

Absent: Jane Gianvito Mathews and Joe Minicozzi

Pre-Meeting - 4:30 p.m.

The Commission discussed the intended process for handling public comment related to the final item on the agenda, a conditional rezoning application on Sunset Parkway. They also discussed the need for Vice-Chair Shriner to be recused from that item.

Regular Meeting - 5:00 p.m.

Chairman Goldstein called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

Administrative

- Ms. Carter moved to approve the minutes of the April 2, 2014, meeting. This motion was seconded by Vice-Chair Shriner and carried unanimously by a 5-0 vote.

Agenda Items

- (1) **Review of Subdivision Modification application on Mountain Song Lane for the allowance of substandard access provisions utilizing an existing unopened ROW to serve two lots. The subject property is a total of 1.10 acres at 17 Mountain Song Lane and includes PINs 9638-72-9370 and 9638-82-0444. The owner and project contact is Jim Demos. Planner coordinating review – Jessica Bernstein.**

Urban Planner Jessica Bernstein oriented the Commission to the site and said that the applicant is requesting a modification of subdivision standards found in the Standards & Specifications Manual pertaining to road and right-of-way widths in order to access and build upon two existing lots.

The subject parcels, as well as surrounding lots, are zoned RS-8. As far back as 1911, these two lots were five separate parcels separated by a twenty-foot right-of-way. At some point, they were combined into two parcels, then separated back out in 2009 and most recently recombined into the two parcels again in 2011. The parcel to the north is 0.66 acres (28,743 square feet). The parcel to the south is 0.446 acres (19,408 square feet) and both are undeveloped.

Mountain Song Lane is platted as a private road but has never been constructed. Current conditions are a curb cut from Riverview Drive onto a gravel drive. The applicant is proposing to improve Mountain Song Lane with asphalt and a concrete apron for approximately 280 feet with a hammerhead turnaround.

The application proposes to follow the original widths as shown on historical plats of 20 feet for the right-of-way and 18 feet of pavement (*however staff has requested that the applicant*

provide 20 feet of pavement, to which they have agreed). City standards require 25 feet of right-of-way and 20 feet of pavement.

In order to legally develop on these lots, the applicant is requesting a reduction of five (5) feet of right-of-way width to maintain the existing, historically-platted conditions.

This project was approved with conditions by the Technical Review Committee at their meeting on March 17, 2014. No public comment has been received regarding this proposal as of the writing of this report.

Staff is supportive of this modification request to allow substandard access, improving Mountain Song Lane with 20 feet of pavement and the existing 20 foot right-of-way.

Mr. Jim Demos, applicant, was present and was available for questions.

Chairman Goldstein opened the public hearing at 5:07 p.m. and when no one spoke, he then closed it at 5:07 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Vice-Chair Shriner moved to recommend approval of the subdivision modification on Mountain Song Lane concerning the width of the right-of-way at Mountain Song Lane, subject to the conditions listed in the Technical Review Committee report. This motion was seconded by Mr. Edmonds and carried unanimously on a 5-0 vote.

- (2) Request for a subdivision modification to allow substandard access for a multi-family development (*not under this review*) off of Gratitude Drive, near Burk Street. PINs include 9638-42-2701, 9638-42-3845, 9638-42-4818, and 9638-42-0831. The property is owned by Farmbound Holdings, LLC and the contact is Chris Day. Planner coordinating review – Jessica Bernstein.**

Urban Planner Jessica Bernstein oriented the Commission to the site and said that the applicant is requesting a modification of subdivision standards found in the Standards & Specifications Manual pertaining to road and right-of-way widths in order to serve a multi-family development (reviewed and permitted separately as a Level I application).

The subject parcels are zoned RM-8 and RM-16, with frontage on Gratitude Drive, an undeveloped private drive which extends from the corner of Burk and Grinnell Streets in West Asheville. The development proposal for a 10-unit multi-family layout is a part of a separate Level I submittal, currently under administrative review and approval.

The proposal is to provide access to multi-family developments, City standards require 50 feet of right-of-way and 25 feet of pavement. The applicant is proposing to utilize the 25-foot right-of-way as shown on existing plats and to provide 20-feet of pavement up to the site. The roadway terminates in a hammerhead turnaround inside the development. Gratitude Drive will remain privately-maintained.

In order to develop this multi-family layout, the applicant is requesting a reduction of approximately 5-feet of pavement and 25-feet of right-of-way width due to the constraints of the existing 25-foot right-of-way and proximity of adjacent property owners.

This project was approved with conditions by the Technical Review Committee at their meeting on April 21, 2014. No public comment has been received regarding this proposal as of the writing of this report.

Staff is supportive of this modification request to allow substandard access to the multi-family development, improving Gratitude Drive with 20 feet of pavement and a 25 foot right-of-way.

Mr. Chris Day, representing the applicant, was present and available to answer questions.

Ms Carter felt there needed to be a stop sign at Burk Street and Langwell Avenue.

Chairman Goldstein opened the public hearing at 5:14 p.m. and when no one spoke, he then closed it at 5:14 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Edmonds moved to recommend approval of a subdivision modification concerning the width of the right-of-way at Gratitude Drive/Burk Street, subject to the conditions listed in the Technical Review Committee report. This motion was seconded by Chairman Goldstein and carried unanimously on a 5-0 vote.

- (3) Request for Level II review of a proposed 7-story, 108,220 square foot hotel at 311 College Street (Hilton Garden Inn) on a 2.35 acre site, a portion of PIN 9649-50-9927. A variance is requested to the design standards found in section 7-8-18 of the UDO pertaining to fenestration requirements. The property owned by Quality Oil Company, LLC and the contact is Daniel Dinsbeer. Planner coordinating review – Alan Glines.**

Level II Review

Urban Planner Alan Glines oriented the Commission to the site and said that this is the consideration of the approval for the Hilton Garden Inn hotel in the downtown Central Business District.

He said this site consists of several parcels under a single PIN Number totaling 2.35 acres with frontage on three streets: College Street to the north, Charlotte Street to the east and Valley Street to the south. For many years this site was the location of TK Tripps Restaurant. The site will be shared by two major uses: a commercial bank who with other office tenants will fill the commercial building; also proposed is a Hilton Garden Inn hotel to be located at the corner of College Street and Charlotte Street which is the subject of this report. The two projects will share driveway access from College Street and the parking structure to be located to the south end of the property,

The site is outside of the traditional downtown core and is in the intermediate height zone (allowing up to 145'). Both College Street and Charlotte Street are key pedestrian streets but the Hilton will have primary access from College Street.

Using a site plan, Mr. Glines said that the the developers are proposing to construct a six-story, 109,000 s.f. hotel with 151 rooms. The existing building that housed the Tripp's Restaurant will be demolished but it is not a contributing structure in the downtown national register district. The hotel will be oriented towards the corner of College Street and Charlotte Street across from the large intersection. In addition to the 151 rooms, the Hilton will have two restaurant spaces, one on the lobby level with access to College Street and another rooftop space with views of downtown Asheville. There will be limited meeting spaces and other ground floor retail space. The primary pedestrian access to the building is from College Street. The active front of the hotel will take place along the interior drop-off area and the typical back-of-house functions are located along Charlotte Street. Charlotte Street is encouraged but not required to have a primary pedestrian entrance.

This project will share a proposed parking structure with the City Centre project which is adjacent to this parcel and which at moment shares a common PIN number. The parking structure will have 320 spaces and will provide a sufficient number spaces for the office users and the hotel guests. There is not an off-street parking standard in the Central Business District.

The proposal is adjacent to the Buncombe County Justice Center which was a Level III project and which opened in 2013.

The project was reviewed by the Downtown Commission for compliance with downtown UDO standards and other design guidelines. The hotel design exhibits base-middle-cap detailing and is fenestrated to meet downtown requirements along College Street. Through the design review process the Charlotte Street façade has been designed and redesigned to meet the downtown design requirements. Although strides have been made in the design of this frontage, a variance will be requested from ground-level fenestration requirements because of the activity on this side of the building and the fall in grade along the frontage area.

The materials will include cast stone, brick and glass windows in an aluminum storefront system. EIFS will be used for the upper cornice at the roof level. Metal awnings will be used over doorways and ground-level windows and the guest drop-off area. The Downtown Commission members offered several suggestions such as activating the corner at Charlotte Street with an opportunity for sculpture and additional landscaping, an emphasis on hardscape elements and making improved pedestrian-connecting spaces along Charlotte Street.

The project will be seeking a variance with review by the Planning and Zoning Commission from fenestration requirements for ground level window, doors and other openings requirements along Charlotte Street, which is a *Key Pedestrian Street*. The fenestration amount proposed at 58% does not meet the 70% required horizontal standard. The design has been altered to increase this percentage and the façade has been improved because of that effort. In this situation, for this use and orientation, Charlotte Street provides the back-of-house functions for the hotel because the parking court is at the front along with hotel guest services. The existing design of Charlotte Street, while listed on the Key Pedestrian Streets map is not very pedestrian friendly mainly due to the large number of travel lanes and the design speed of the roadway which is in the form of a major thoroughfare. The Downtown Commission supported this request as presented at the meeting and suggested that an awning be added to the lower doorway along Charlotte Street. This variance request is accompanied by a separate variance report.

This project was reviewed the by the Technical Review Committee and was afterwards reviewed by the Downtown Commission. The Planning and Zoning Commission is the final review body for this project and will be asked to consider the fenestration variance by separate application.

The proposed hotel is located in a gateway area for the downtown at a key intersection into the downtown area. There are a variety of building heights in this area already but the downtown master plan recommends heights of up to 145 feet. While the proposed building is much shorter at six stories, it is compatible with the downtown design requirements and activates College Street and the major intersection with Charlotte Street. The surrounding area is home to the Justice Center and a variety of commercial and governmental office uses.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- College Street a key gateway, is activated with new business and pedestrian activity
- An underperforming downtown property will receive an infusion of new investment
- Charlotte Street is provided with an attractive façade but lacks pedestrian activation

The Downtown Commission voted 7-1 to approve the Hilton Garden Inn project at their meeting on April 11, 2014. Staff also supports the proposal and feels that the project meets the intent of the UDO and the Downtown Master Plan.

Mr. Chris Day, representing the applicant, provided additional images and graphics of the project. He noted that the biggest challenge was the S. Charlotte Street grade change.

Mr. Kevin Roberts, architect for the project, shared some color images of the different street views and images of the drop-off zone.

Chairman Goldstein opened the public hearing at 5:28 p.m.

Ms. Grace Curry, resident on Edgemont Road, asked about the lighting on the building.

Chairman Goldstein closed the public hearing at 5:30 p.m.

Director of Development Services Shannon Tuch responded to Ms. Curry's inquiry regarding lighting of the building. She said that lights attached to the building is reviewed under the building permit, and that has not yet been reviewed or submitted as part of this application. The requirement is for those lights to be full cut-off fixtures. We do allow for decorative lighting but they must be very low intensive lighting or it has to be shielded.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Carter moved to recommend approval of a proposed 7-story, 108,220 square foot office building at 311 College Street (Hilton Garden Inn) on a 2.35 acre site, subject the Technical Review Commission conditions, and subject to approval of the variance. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 5-0 vote.

Variance

Assistant City Attorney Jannice Ashley explained the procedures for this item which requires the Commission to act as a Board of Adjustment (5 members) and all testimony needs to be sworn.

City Clerk Magdalen Burleson administered the oath of office to anyone who anticipated speaking on this matter.

Ms. Ashley said that the Commissioners must base their decision on this variance on what is presented in this public hearing. Mr. Glines may refer to parts of the previous presentation as staff has made certain findings and conclusions. The Commissioners are free to disregard those and make their own findings and conclusions. She asked that any Commissioner who has any special knowledge of this variance disclose that at this time.

Ms. Ashley also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Ms. Ashley also noted that the Commissioners are not bound by their vote on the previous project.

Mr. Glines said that the applicant is requesting one variance pertaining to design and operational standards found in the UDO for projects in the Central Business District (CBD):

- Section 7-8-18(13)a.(5.)a. – *Fenestration*: “For buildings along streets designated as key pedestrian streets, at least 70 percent of the street level façade is composed of windows, doors and other openings.”

Plans for this project show only 58% fenestration along Charlotte Street,

The applicant is proposing the construction of a six-story hotel building at the corner of College Street and Charlotte Street in the Central Business District (CBD). This project is considered a Level II review pursuant to Section 7-5-9.1 of the UDO.

Other Considerations:

- Per the review process in Section 7-5-9.1(b)(10), the Downtown Commission provides a recommendation on all variance requests considered by the Planning & Zoning Commission. The Downtown Commission reviewed the plans and the variance request at their meeting on April 11, 2014, and recommended support with a vote of 7-1.

FINDINGS:

Conclusion 1 - There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

Test 1 - If made to comply with the provisions of the ordinance, the property owner cannot make reasonable use of the property.

Streetwall Step-back: The subject property is a corner parcel which is working in cooperation with a shared driveway and guest drop-off area at the west side of the parcel and building. The hotel is providing pedestrian access to College Street and the west side of the structure is activated with guest drop off and the hotel lobby. The Charlotte Street façade is where the back-of-house functions are to be located. The fenestration requirement is a linear calculation based on the length of the façade on the street frontage. Charlotte Street has a steep grade requiring that the building reset what is considered the pedestrian level to include the functional basement as the project moves away from the corner at College Street. The design has been reworked to incorporate additional windows or doors along this façade but the fenestration requirement is still not met. With the configuration and operation of Charlotte Street as a downtown thoroughfare with higher speeds and a large number of travel lanes, the hotel use could not reverse its hotel front and operate from Charlotte Street.

Test 2 - The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

This corner parcel is at a primary intersection in downtown Asheville. Charlotte is not configured at this time to be a pedestrian oriented street with businesses that could operate from and benefit from frontage along Charlotte Street in this section. In addition on-street parking and other streetscape design issues that support a downtown business environment are not present here. The natural slope of Charlotte Street requires that the building reset what is the pedestrian level to include the basement section of the hotel. These factors are related to this specific site and the design speeds inherent in the configuration of Charlotte Street and therefore affect the use of the applicant's land.

Test 3 - The hardship is not the result of the applicant's own actions.

In some ways design should always be the result of the applicant's own actions but there are practical difficulties present on this site which is influenced by the street configuration and the natural slope of the lot. The design in this case is heavily influenced by the influences on the site and so the hardship is not the result of the applicant's own actions.

Conclusion 2 - The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

Fenestration: Fenestration is required because it enhances the character of downtown by providing features of visual interest at the sidewalk for the benefit of pedestrians, the streetscape and defines the scale of buildings between the ground and upper floors. The proposed design is providing 58% of the fenestration requirement and will provide interest and a building presence along this street. The general purpose and intent of the ordinance are still upheld with the proposed design.

Conclusion 3 - The granting of the variance secures the public safety and welfare and does substantial justice.

The variance is due to challenges with the site and the current configuration and use of the roadway adjacent to the site. Granting the variance secures public safety and welfare and provides substantial justice because the request is reasonable and the design provided makes a close attempt to meet the standard within the limitations of the site.

The Downtown Commission reviewed the application and supports the requested variance. Staff recommends approval of the requested variance of a reduction of the ground level fenestration from 70 percent to 58 percent provided.

Staff finds this request to be reasonable and support the goals of downtown and other City adopted plans.

In response to Ms. Carter, Mr. Glines said that staff might need to provide additional options in the UDO that addresses this issue of hardship due to street slopes.

In response to Chairman Goldstein, Mr. Glines said that if Charlotte Street was not a key pedestrian street, the amount of fenestration would be 50%.

When Ms. Carter asked if there were any changes to the transportation plans on S. Charlotte Street, City Traffic Engineer Jeff Moore said that the City has no plans to change and he was not aware if the N.C. Dept. of Transportation has any plans for change. He noted that the speed limit in this area is 45 mph, but the design speed is much higher.

Mr. Kevin Roberts, architect, said that they have made an effort from a development and aesthetic standpoint to get as close to the 70% fenestration as they could. He felt that the project successfully activates the street.

Ms. Carter supported the variance, but acknowledged that the Commission has been identifying priority pedestrian corridors, and even though S. Charlotte Street is not a prime pedestrian corridor yet, she felt it will be in the future.

Chairman Goldstein opened the public hearing at 5:45 p.m. and when no one spoke, he then closed it at 5:45 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Edmonds moved to recommend approval of a variance of a reduction of the ground level fenestration from 70 percent to 58 percent provided. This motion was seconded by Mr. Koon and carried unanimously on a 5-0 vote.

- (4) **Request for Level II review of a proposed 4-story, 84,000 square foot office building at 311 College Street (City Centre) on a 2.35 acre site, a portion of PIN 9649-50-9927. A variance is requested to the design standards found in section 7-8-18 of the UDO pertaining to fenestration requirements. Modifications to the landscape standards are also requested. The property is owned by Pulliam Spake, LLC and the contact is Rusty Pulliam. Planner coordinating review – Alan Glines.**

Level II Review

Urban Planner Alan Glines oriented the Commission to the site and said that this is the consideration of the approval for the proposed City Centre office building in the downtown Central Business District

Using a site plan, Mr. Glines said that this site consists of several parcels under a single PIN Number totaling 2.35 acres with frontage on three streets: College Street to the north, Charlotte Street to the east and Valley Street to the west. For many years this site was the location of TK Tripps Restaurant. The site will be shared by two major uses: a commercial structure containing a bank with other office tenants who will fill the commercial building that is the subject of this report; and a Hilton Garden Inn hotel (the subject of another report) to be located at the corner of College Street and Charlotte Street. The two projects will share driveway access from College Street and a parking structure with 320 spaces located to the south end of the property. The site is outside of the traditional downtown core and is in the intermediate height zone (allowing up to 145'). Both College Street and Charlotte Street are key pedestrian streets but City Centre will establish their primary pedestrian access along College Street.

The developers are proposing a four-story, 80,000 s.f. office building and a multi-level parking structure with 320 spaces. The existing building, the former Tripp's Restaurant, will be demolished. The structure is not a contributing structure in the downtown national register district. The office building will be oriented towards the corner of College Street and Valley Street across from the round-about. No specific uses are yet proposed for the ground level of this structure other than a bank. The ground level could be used for a variety of commercial uses and could have additional doors added to the building façade.

This project is also proposing a parking structure located at the south end of the parcel which will provide 320 spaces. The City Centre project and the neighboring Hilton Garden Inn will share these spaces. There is not an off-street parking standard in the Central Business District but most new developments provide spaces. Besides the College Street access, the secondary access to the parking structure will be from Charlotte Street through a standard driveway there.

The proposal is adjacent to the Buncombe County Justice Center which was a Level III project and which opened in 2013.

The project was reviewed by the Downtown Commission for compliance with downtown UDO standards and other design guidelines. The office building exhibits base-middle-cap detailing and is properly fenestrated to meet downtown requirements. The materials will include a large amount of glass and spandrel glass using an aluminum storefront system with some cast stone as a base material. A metal awning and surround is proposed to frame the building and provide definition to reduce the appearance of building width by subdividing it into modules that are reminiscent of traditional building widths. The Downtown Commission supported this metal framing and understood its purpose but staff noted that an air rights process or encroachment

agreement with the City of Asheville will be required to approve this detail which extends over the property line.

Modifications/ Variance:

- The project is seeking a landscape modification from the normally required parking structure screening from the adjacent property to the south of the site. Such requests are considered by the Tree Commission with consideration of a recommendation from the Downtown Commission. They supported this request and the Tree Commission will be asked to review the request as a part of an alternative compliance process.

The required standard is one tree and two shrubs per 30 feet of length, and they are requesting that this requirement be voided. The property to the south is a Buncombe County parking lot, and the development is to be built to the lot-line because they have secured an easement from Buncombe that will provide the required passive fresh air to the parking structure. It is felt that no actual buffer is needed in this location which could be a future redevelopment site.

- The project will be seeking a variance from the Planning and Zoning Commission for relief from fenestration requirements for the parking structures that front on Charlotte Street, a Key Pedestrian Street. In these situations the parking structure is required to provide windows along the ground level of the garage matching the fenestration amount of 70% or providing a habitable liner space to a depth of 20' along the façade. Prior to today, because of the short distance of the façade and the use as a secondary access, the developer was seeking to instead provide a 'green screen' to be used to soften the structure with live vegetation. The Downtown Commission supported this request but recommended that the stair tower be opened up with windows and that irrigation for the remaining green screen be provided to ensure the success of the plants. As of today, no more green screen is being requested. The developer is now providing 42% openings (at least 70% required) and is seeking a variance of 28% of window, doors or other openings.

This project was reviewed by the Technical Review Committee who felt that technical standards could be met and was afterwards reviewed and recommended for approval by the Downtown Commission. The Planning and Zoning Commission is the final review body for this project and will be asked to consider the fenestration variance by accompanying application.

The proposed building is located in a gateway area for the downtown near a key intersection into the downtown area. There are a variety of building heights in this area already but the Downtown Master Plan recommends heights of up to 145 feet.

While the proposed building is much shorter at four stories, it is compatible with the downtown design requirements and activates College Street which is the primary street through downtown on the east side. The area is home to the Justice Center and a variety of commercial and governmental office uses.

The Comprehensive Plan recommends additional infill and density in the downtown area and so this proposal is compliant with the goals of the Comprehensive Plan.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- College Street a key gateway is activated with new business and pedestrian activity
- An underperforming downtown property will have additional investment
- Charlotte Street is not activated from the pedestrian standpoint by the development of the parking structure

The Downtown Commission voted 8-0 to approve the City Centre project at their meeting on April 11, 2014. Staff also supports the proposal and feels that the project meets the intent of the UDO and the Downtown Master Plan.

When Ms. Carter asked about the Planning comments in the TRC report regarding the curb-cut along Charlotte Street, Mr. Glines said that the plan has been modified and that when staff does the final TRC review, that will get addressed.

Mr. Chad Roberson, architect on the project, showed the Commissioners some images of the building. He showed the site plan and talked about the circulation on the site. He then showed images of the building from various locations.

In response to Mr. Edmonds, Mr. Roberson said that handicapped parking is located inside the parking deck.

Vice-Chair Shriner spoke in support of both projects on this site and felt they would be a great addition to that corner.

Chairman Goldstein opened the public hearing at 6:03 p.m. and when no one spoke, he then closed it at 6:03 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Koon moved to recommend approval of a proposed 4-story, 84,000 square foot office building at 311 College Street (City Centre) on a 2.35 acre, subject to the Technical Review Commission conditions and subject to approval of the variance. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 5-0 vote.

Variance

Assistant City Attorney Jannice Ashley explained the procedures for this item which requires the Commission to act as a Board of Adjustment (5 members) and all testimony needs to be sworn.

City Clerk Magdalen Burleson administered the oath of office to anyone who anticipated speaking on this matter.

Ms. Ashley said that the Commissioners must base their decision on this variance on what is presented in this public hearing. Mr. Glines may refer to parts of the previous presentation as staff has made certain findings and conclusions. The Commissioners are free to disregard those and make their own findings and conclusions. She asked that any Commissioner who has any special knowledge of this variance disclose that at this time.

Ms. Ashley also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Ms. Ashley also noted that the Commissioners are not bound by their vote on the previous project.

Mr. Glines said that the applicant is requesting one variance pertaining to design and operational standards found in the UDO for projects in the Central Business District (CBD):

- **Section 7-8-18(f)(13)(a)(5)(a)-** "For buildings along streets designated as key pedestrian streets, at least 70 percent of the street level façade is composed of windows, doors and other openings." Related to the following standard;
- **Section 7-8-18(f)(9) – Parking and Loading standards:** "Parking garages placed on a key pedestrian street shall provide a full habitable story and use along the street-side façade(s) with a minimum depth of 20 feet or shall comply with the design and operation standards for openings and design organization requirements for new construction."

The proposed plans for this project show 0% fenestration along Charlotte Street, a key pedestrian street and prior to today, the developer was instead proposing an alternative green screen over the parking structure façade. At this time, a green screen is no longer being proposed by the developer. He then described what the developer is proposing today, noting that the site plan shown will be approved as part of the variance. The developer is now providing 42% openings (at least 70% required) and is seeking a variance of 28% of window, doors or other openings.

The applicant is proposing the construction of a four-story office building along College Street with a parking structure at the back of the site with a secondary entrance on Charlotte Street in the Central Business District (CBD). This project is considered a Level II review pursuant to Section 7-5-9.1 of the UDO.

Other Considerations:

- Per the review process in Section 7-5-9.1(b)(10), the Downtown Commission provides a recommendation on all variance requests considered by the Planning & Zoning Commission. The Downtown Commission reviewed the plans and the variance request at their meeting on April 11, 2014, and recommended support with a vote of 8-0 with recommendations for mitigation of the request.

FINDINGS:

Conclusion 1 - There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

Test 1 - If made to comply with the provisions of the ordinance, the property owner cannot make reasonable use of the property.

When parking structures are proposed along a key pedestrian street, two options for fenestration are offered in the code: 1. A habitable liner building may be provided along the frontage area with a minimum depth of 20 feet, or 2. The parking structure may be fenestrated to meet the same standard for buildings. The section of parking structure along this frontage is about 65 feet wide which is wide enough to provide a drive aisle and space for a single parking bay on each side of the entrance. At the corner to the southeast a code-required exit stairway will open out to Charlotte Street. Providing a full habitable liner building to comply with the ordinance would mean that a small space would be located on either side of the entrance. If the fenestration standard was met instead, the detailing covering the parking structure would be isolated from other portions of this development (the office building) and could be an uncomplimentary addition to the Hilton Garden Inn project (they are adjacent but separated by a property line). The developer is providing 42% openings (at least 70% required) and is seeking a variance of 28% of window, doors or other openings.

Test 2 - The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

The portion of the parcel with the parking structure is isolated from the larger area of the development and is providing a functional second entrance. With the natural fall in grade the lot width is separated from the primary levels of the other parts of the office building and parking structure. These factors influence the operation and use of this section of lot. Charlotte Street is not currently configured to be a pedestrian oriented street with businesses that could operate from and benefit from frontage along Charlotte Street. This is contrary to the reason for the fenestration requirement, which is to provide an interactive commercial facade in a format directly accessible for the pedestrian. The fenestration provision for parking structures is to mitigate the impact a parking structure (which is by nature non-pedestrian oriented) by helping them blend into an otherwise robust pedestrian street with commercial frontages. We do not have that scenario on Charlotte Street at the present time. These factors are related to this specific site and affect the use of the applicant's land.

Test 3 - The hardship is not the result of the applicant's own actions.

In some ways design should always be the result of the applicant's own actions but there are practical difficulties present on this site which is influenced by the street configuration and the intent of the design standards to support a pedestrian environment. At this point the pedestrian environment is not present or supported by a robust commercial environment and quality pedestrian streetscape.

Conclusion 2 - The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

The Downtown Commission did recommend that the stair tower be opened with windows especially at the ground level to move the project towards compliance with the ordinance.

Conclusion 3 - The granting of the variance secures the public safety and welfare and does substantial justice.

The variance is due to challenges with this particular use and its separation from the other context of the development. It is also affected by the configuration and use of the roadway as a thoroughfare and not a pedestrian oriented street. Granting the variance secures public safety and welfare and provides substantial justice because the request is reasonable and is of limited impact on the streetscape.

The Downtown Commission reviewed the application and supports the requested variance with recommendations that the stair tower be opened with windows especially at street-level and that the remaining trellis area be irrigated to improve the chances for a successful growing environment for plant materials. Staff supports the variance mitigation measures identified by the Downtown Commission and recommends approval of the following variance request if that adjustment is made: Reduction of the ground level fenestration adjacent to a parking structure from 70 percent to an amount reflected by the portion of the stairwell.

With this amendment, staff finds this request to be reasonable and support the goals of downtown and other City adopted plans.

Mr. Chad Roberson, architect on the project, explained that the developers took into account the Downtown Commission's comments and have eliminated the green screen proposal. They are now asking for a variance of 28% from the 70% fenestration requirement.

Chairman Goldstein opened the public hearing at 6:18 p.m. and when no one spoke, he then closed it at 6:18 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Carter moved to recommend that the stair tower be opened with windows on the S. Charlotte Street entrance side, and approval of a variance of a reduction of the ground level fenestration adjacent to a parking structure from 70% to 42% (variance of 28%) pursuant to the rendering received at this meeting. This motion was seconded by Mr. Koon and carried unanimously on a 5-0 vote.

- (5) Request for Level II review for the redevelopment of a new grocery store, gas filling station and accessory retail space totaling 115,175 square feet at 780 Hendersonville Road (Ingle's Markets) on a 13.48 acre site, PINs 9647-91-5776, 9647-91-7452, 9647-91-8485, and 9657-01-0662. The property is owned by Ingle's Markets, Inc. and the contact is Preston Kendall. Planner coordinating review – Jessica Bernstein.**

Urban Planner Jessica Bernstein oriented the Commission to the site and said that the applicant is requesting review of site plans to construct a new retail market, gas canopy with retail kiosk and associated site improvements. This project is considered a Level II review pursuant to Section 7-5-9 of the UDO.

The project site consists of four parcels with a total of 13.48 acres located at 780 Hendersonville Road. The site is zoned Highway Business and surrounding parcels are Highway Business (HB) and RS-4 to the north; RS-4 to the east and RS-4, Office and HB to the south.

The applicant is proposing to demolish the existing Ingles store, a portion of the adjacent shopping center and most of the parking field. A retail space of 18,382-square feet will remain, located closest to Hendersonville Road. Plans show a new 74,900 SF grocery store, 18,000 SF of other retail uses (relocated from the demolished spaces) and a 3,893 SF gas canopy/kiosk on the site (total 115,175 SF).

There are currently three access points into this site and all three will remain in their existing locations: two driveways from Hendersonville Road and one from Cornell Street (truck route around the rear of the main building). Sidewalks area existing along Hendersonville Road and plans indicate a location for a transit shelter. There is no sidewalk along Cornell Street, however this is not identified as a needed linkage and none is required. Existing traffic signals will remain.

Parking areas are to remain in generally the same existing locations; however the overall parking field will be reduced and landscaped, resulting in a total of 329 spaces (including required accessible parking). The proposal includes 8 accessible spaces (with 2 van spaces) and bike racks (17 spaces).

Landscaping is required for this project and includes a property line buffer adjacent to residential zoning to the north and east (type B 30') as well as a street buffer, street trees along both Hendersonville Road and Cornell Street, parking lot and building impact landscaping. Any dumpsters visible from a property line must be screened. Open space is required for this project at a rate of 15% of the total lot area, which is 2.02 acres. The open space area is designated towards the eastern end of the lot, which is and will remain undisturbed.

The applicant has proposed modifications to reduce a portion of the required property line buffer as well as to reduce planting island size within the parking field. This request was evaluated by the Tree Commission and they have recommended approval. The Commission did suggest that smaller maturing trees be planted in the majority of the tree islands, limiting large maturing trees to eight (out of the 24 total trees within the islands).

Alternative compliance for landscaping is reviewed by the Tree Commission and was recommended for approval by that body on April 21, 2014. The Technical Review Committee also recommended approval (with conditions) at their meeting on April 21, 2014. She has received one comment from a property owner across Hendersonville Road who was concerned about the light glare from the gas canopy. She shared that the project would be required to comply with the City's lighting ordinance and that there would be increased landscaping.

Staff recommends approval of the project subject to compliance with the conditions as included in the TRC staff report.

In response to Vice-Chair Shriner, Ms. Bernstein explained what would trigger at Level III review.

Mr. Preston Kendall, representing Ingles Markets, showed images on what the new store would look like and stated they are hoping to make the center a lot more attractive for the community.

Mr. Kendall responded to Mr. Koon when he asked how they would mitigate access to the existing retail during construction.

Chairman Goldstein opened the public hearing at 6:34 p.m. and when no one spoke, he then closed it at 6:34 p.m.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Koon moved to recommend approval of the redevelopment of a new grocery store, gas filling station and accessory retail space totaling 96,973 square feet at 780 Henderson Road (Ingles Markets) on a 13.48 acre site, subject to the conditions listed in the Technical Review Committee staff report. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 5-0 vote.

- (6) Request for Conditional Zoning from RS-8 Residential Single Family High Density District and Highway Business District to Office District/Conditional Zoning for the construction of a dental clinic at 20 and a portion of 28 Deaverview Road on 0.59 acres, PINs 9628-75-1507 and a portion of 9628-75-0515. The property is owned by Dr. Thomas Lee Morton, Jr. and the contact is Mark Wilson. Planner coordinating review – Julie Fields.**

Assistant City Attorney Ashley explained the difference between conditional zoning and a straight rezoning. A straight rezoning would allow any uses allowed in that district to be built. With a conditional zoning the proposed use is the only use that can be made of that property and it carries with the property. With conditional zoning, if the ownership of the property changes, the only use that can be made of the property is what was approved in the conditional use. If you don't start construction within two years of the project under conditional zoning, the property reverts back to the original zoning.

Urban Planner Julia Fields oriented the Commission to the site and said that the applicant is requesting review of a conditional zoning submittal proposing to rezone property from Highway Business District and RS-8 Residential Single-Family High Density to Office

District/Conditional Zoning in accordance with Section 7-7-8 of the UDO, for the construction of a dental clinic/office facility.

The subject property consists of a .21 acre parcel located at 20 Deaverview Road and a portion (.378 acre) of a .6 acre parcel located at 28 Deaverview Road in West Asheville. The property contains a dental clinic and parking at 20 Deaverview Road, zoned Highway Business (HB) District with additional parking for the clinic and a single-family home located at 28 Deaverview Road, zoned Residential Single-Family High Density District (RS-8).

The applicant, Dr. Thomas L. Morton, Jr., proposes to construct a new dental clinic to the south of the requested rezoning site with accompanying parking largely located along Deaverview Road. A small parking area (2 spaces) and parking garage (2 spaces) are proposed to access off of Green Hill Avenue for employee parking. The two properties will be recombined to subdivide off the single-family home which will remain and will continue to be zoned RS-8. The requested conditional zoning (Office) is for the remainder of the property which will house the new dental clinic and associated parking. It is proposed that the existing practice will remain in operation while the new clinic is being constructed. The practice will close briefly while the existing building and parking is demolished and new parking and storm drainage are constructed.

The new building will be one-story in height with a basement containing storage/flex office space and the garage. The building has a gross floor area of 6,800 square feet and a 3,400 square foot footprint. It is planned to contain 3,350 square feet of space for the clinic with 2,850 square feet of flex office and storage space.

Principal access to the site is proposed to be from Deaverview Road where there are currently two entrances to the property and dental clinic. This proposed principal access leads to a parking area containing fifteen parking spaces and a drop off circle with Porte-cochere. A secondary access for employees is shown off of Green Hill Avenue. This secondary access leads to two parking spaces and a two vehicle parking garage. A modification is requested for parking (two spaces). Twenty-one spaces are required; nineteen are provided. Sidewalks are to be provided along Deaverview Road (existing but to be improved) with a fee in lieu of sidewalk approved for the frontage along Green Hill Avenue. Parking for a single bicycle and handicapped parking (two spaces) is shown on the site plan.

Landscaping is required for this project and includes street trees, street buffer, parking lot landscaping, property line bufferyards, and building impact landscaping. Landscaping shown on the submitted plans is compliant with the exception of the property line along Green Hill Avenue. A modification is requested to allow a small portion of the driveway to encroach into the property line buffer in this area.

The proposal was approved with conditions by the Technical Review Committee (TRC) on April 7, 2014. A number of TRC comments have been addressed in the submittal received by the commission. Following review and recommendation by the Planning and Zoning Commission this request must be reviewed by the Asheville City Council.

She received comments from an adjoining property owner who was concerned about traffic and drainage issues on the site. Another person who is the executor of property on Green Hill was interested in seeing the white pine buffer along Green Hill remain.

While the location of the new dental clinic building is on property currently zoned RS-8, it is adjacent to property zoned HB. The existing dental clinic has been on the property to be zoned Office District/Conditional Zoning for many years. Some of the parking for the existing clinic is currently located on the RS-8 zoned parcel. The site is bordered by properties zoned Highway Business District to the east and south (containing a medical equipment/clinic facility and parking for a restaurant located on Patton Avenue). To the north and west the property abuts or is across a street from parcels largely zoned RS-8 and containing single family homes.

Conditional Zoning Findings: 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. *That the proposed use or development of the land will not materially endanger the public health or safety.*
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.
2. *That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.*
There are no significant natural or topographic features on the site or in the immediate vicinity.
3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.*
A dental clinic and accompanying parking are already located on the subject property so the proposed use should not injure the value of adjoining or abutting property. The landscaping and site improvements proposed should enhance the area. The Office District has operations standards limiting activities associated with non-residential uses.
4. *That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.*
The development proposed abuts commercial uses on two sides and single-family homes on the other sides. Buffering will be provided against the single-family zoned properties. The scale of the proposed new structure is in keeping with the buildings in close proximity.
5. *That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.*
The proposed development supports the land use goal of pursuing compatible redevelopment in appropriate areas.
6. *That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.*
The development site is located just off of Patton Avenue in West Asheville. The W3 transit line services the area. Adequate water supply, police protection, waste disposal and similar facilities are verified during the TRC review process.
7. *That the proposed use will not cause undue traffic congestion or create a traffic hazard.*
The proposed use of the property is the same as the existing use located there. Although there will be limited access to the site via Green Hill Avenue (existing access is only off of Deaverview Road) it is not anticipated that this will cause traffic issues.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- The proposal is for the redevelopment of a property to support the same use type as currently exists.
- The proposal show enhanced landscaping and site improvements to the property.
- There will be limited vehicular access off of Green Hill Avenue.

Staff recommends approval of the request to conditionally zone the proposed site (.588 acres) to Office CZ, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) A subdivision recombination will have to be approved and recorded prior to permit issuance; and (6) Per the UDO (Office District), all activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 9:00 p.m. Staff also recommends support for the modifications to the landscaping and parking standards as requested.

Mr. Mark Wilson, landscape architect, responded to the issues of the two individuals who expressed concern about the project. Using the existing conditions demolition plan graphic, he explained that there is a common drive that now exists and, as a result of stormwater calculations, they will be removing some asphalt which will cut-off the pass-through access. He asked for the Commission's approval of the project with the two variance requests.

In response to Chairman Goldstein, Mr. Wilson said that the size of the practice will not increase.

Chairman Goldstein opened the public hearing at 6:53 p.m.

Mr. Paul Long, property owner of 34 Deaverview Road, was concerned about the drainage problems and that the driveway not be used for construction activity.

Ms. Kitty Long, property owner of 34 Deaverview Road, was concerned that traffic would increase on the narrow Green Hill Avenue after construction.

Mr. Long, tenant of 34 Deaverview Road, said that he has spent a lot of time and energy renovating the house and property and has been struggling with existing stormwater runoff.

Chairman Goldstein closed the public hearing at 7:00 p.m.

Addressing construction traffic, Mr. Wilson said that he will provide the contractor information on where to enter and exit the site and will add notes to their drawings that tell drivers not to access that driveway, even temporary. Again, if there are some issues with the drainage, he would be happy to investigate that.

Director of Development Services Shannon Tuch said they are proceeding with a conceptual plan at this point and there will be a more detailed review later before this project goes to City Council. When the drainage issue came up, she did look at the existing plan and then the erosion control plan. Even though the site work is limited to the property that would support the dentist's office, there are some improvements to that property that directs water towards the residences, but under the post development plan, that water gets directed towards the office to the storm drainage that carries the water to the road. There should be an improvement.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Edmonds moved to recommend approval of conditional zoning for the construction of a dental clinic at 20 and 28 Deaverview Road from RS-8 Residential Single-Family High Density District and Highway Business District to Office District/Conditional Zoning, and approval to the modifications to landscaping and parking, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to issuance of any required permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) A subdivision recombination will have to be approved and recorded prior to permit issuance; and (6) Per the UDO (Office District), all activities associated with non-residential uses, including deliveries and refuse collection, shall be conducted between the hours of 7:00 a.m. and 9:00 p.m. This motion was seconded by Ms. Carter and carried unanimously on a 5-0 vote.

At 7:09 p.m., Chairman Goldstein announced a short recess.

- (7) Request for Conditional Zoning from RS-4 Residential Single Family Medium Density to Highway Business District/Conditional Zoning to allow the operation of a residence and a canine rehabilitation center and day use kennel on a 0.825 acre parcel at 1 Sunset Parkway, PIN 9649-65-3576. Landscape modifications and parking modifications are requested. The property is owned by Zion Ministries and the contact is Mark Ledyard. Planner coordinating review – Alan Glines.**

At the request of Vice-Chair Shriner, Ms. Carter moved to recuse Vice-Chair Shriner for the remainder of the meeting due to a conflict of interest. This motion was seconded by Mr. Edmonds and carried unanimously on a 5-0 vote. At this time, Vice-Chair Shriner left the meeting.

Assistant City Attorney Ashley explained the difference between conditional zoning and a straight rezoning. A straight rezoning would allow any uses allowed in that district to be built. With a conditional zoning the proposed use is the only use that can be made of that property and it carries with the property. With conditional zoning, if the ownership of the property changes, the only use that can be made of the property is what was approved in the conditional use. If you don't start construction within two years of the project under conditional zoning, the property reverts back to the original zoning.

In response to Mr. Koon, Ms. Ashley said that spot zoning is a kind of zoning where you look for particular kind of factors. Two factors are parcel size and whether the zoning proposed is different from all the other zoning in the surrounding site.

Urban Planner Alan Glines oriented the Commission to the site and said that the consideration of a rezoning request from RS-4 to Highway Business/Conditional Zoning to adaptively reuse a former church (and prior to that a social club and residence) to develop a residence with attached canine rehabilitation clinic and daycare facility.

The subject property consists of a .82 acre parcel (zoned RS-4) located at 1 Sunset Parkway in north Asheville. The property contains a structure that has been a place of worship for a number of years; but was built as a women's club and residence. It has a driveway and parking area entrance along Charlotte, but it has a second façade and driveway on Sunset Parkway. The site is bordered by properties zoned RS-4 to the north and east, a historic conditional use (HCU to the south use for the Manor Inn Apartments). To the west the property

across Charlotte Street the property is the Unitarian Universalist Church (zoned Institutional) and RM-6 zoned multi-family parcels.

The existing circa 1926 brick structure is built in a Georgian-revival style with a residentially scaled facade along Sunset Parkway and a large sanctuary space on the south portion of the parcel visible from Charlotte Street. The tax card for the property currently shows 14,821 square feet on varying floors of the two buildings including space in a basement level. The residential facade fronts on Sunset Parkway and there is a residentially-scaled driveway along this side. The sanctuary faces Charlotte Street where there is a driveway access and a porte-cochere drop-off for the former church. Lawn areas cover the corner of the site adjacent to Sunset Parkway and in the area behind the former sanctuary.

The applicant, Dr. Mark Ledyard, proposes to convert an existing structure that has been used most recently as a church to create a single-family residence in the portion of the building with frontage along Sunset Parkway; and convert the existing large sanctuary space that fronts on Charlotte Street for two uses: a canine rehabilitation clinic and a dog daycare facility. These buildings which have had damage from the elements through neglect will be restored. The site will be landscaped to provide a buffer to the adjacent multi-family residential use (Manor Inn) on the south side and to the east for the single family home.

Access for the canine facilities will be from Charlotte Street from the existing single driveway. The residence will use the existing smaller driveway located on Sunset Parkway which is of a residential scale

The east facade of the sanctuary space facing the residential use will be altered to reduce the amount of transparent openings and create a more solid facade (for sound proofing purposes). Along the west side (the Charlotte Street facade) the building will be rehabilitated to meet building code requirements and sound-proofing glazing added to existing window openings. No changes are proposed for the south facing side of the clinic area (the former sanctuary space) which is primarily a brick facade. In the former sanctuary space, a second floor will be added in this area in the space of the high ceiling and the new upper floor will be used for office space and storage. This second floor area will create an additional 2,400 square feet.

Principal access to the clinic will be from Charlotte Street from the existing single driveway point. Along the driveway there are six parking spaces and an area for stacking where drop-off and pick up for the canine facilities is proposed at the existing porte-cochere. The proposal no longer includes an agreement that was proposed with Unitarian Universalist Church (UUC) to provide up to six parking spaces for staff of the canine facility. In the past week, the agreement for shared parking has changed, and the UUC parking will not be available. As a solution to the change for shared parking, Mr. Ledyard has offered to provide some spaces for staff at their current operation at 208 Charlotte Street - Charlotte Street Animal Hospital. The distance between the two locations is just over 900 feet. That is more than our remote parking allowance described in the UDO.

In addition the applicant is asking for a parking reduction because of the methods of operation for the rehabilitation clinic and day care is that pet owners drop off their pets for their treatment and for the day care use. The animals in the rehabilitation program are scheduled and remain at the clinic for periods of four to six hours at a time and the clinic does not take in an additional afternoon shift of patients. The owners do not wait with their pet during the rehabilitation because parking spaces are not provided for this component. The same is true for the day care pet owners who leave their pets for the day. In a similar way, picking up the pets can also be managed by owners who call or text ahead when they are on their way in. The staff can get the animal ready for pick up at the porte-cochere entrance; so there is no need for the owner to park and come inside. In this way the number of spaces is mitigated by the methods of the operation. The need is therefore more for stacking than parking for patrons, and stacking for up to 5 cars is possible in the loop driveway.

The proposal is a conditional zoning which means that the developer and City Council agree to conditions for the rezoning of the property. Staff has worked with the developer to understand the proposal and to determine limitations for the proposed uses appropriate for this area and nearby uses.

Hours of Operation: Hours of operation for the clinic and day care and related deliveries will occur only Monday-Friday 7:00 a.m. until 6:00 p.m.

Number of animal clients: The number of patients and day care animals per day will be limited to 30 (thirty). Since the nature of the rehabilitation treatment (basically all or most of the day) and the daycare activity are mostly all-day visits, the number animal clients shall be inter-changeable for the purposes of this application.

Coordination of dropping off and picking up of pets: To the extent possible it is expected that the drop off and pick up of pets will be coordinated by appointment, text message or phone to facilitate the flow of traffic into and out of the site in light of limited on-site client parking.

Cleanliness of the site: The site will be maintained daily to ensure the sanitary nature of the site and to minimize odors.

Limit noise of the development: The animals will be housed indoors except when they are outside in the designated area for necessary purposes and accompanied by staff. The developer will install sound attenuation measures designed by a qualified acoustical consultant for exterior walls, roof and openings in the animal services areas as demonstrated on plans for the project.

Modifications:

- Landscaping - Property line buffer along the east side reduced to 15 feet with additional plantings in this zone taking into account a natural change in grade; and along the south side a buffer reduction to 10 feet with the installation of a fence for a portion of the buffer length. Plantings are to be placed along the outside of the fence adjacent to the neighboring property. These alternatives are a common scenario for adaptive re-use sites.
- Parking - Remote parking spaces to be provided for staff at 208 Charlotte Street - Charlotte Street Animal Hospital.

This project review began with the Technical Review Committee (meeting date April 21, 2014) who considered technical issues and determined that the proposal would be able to meet all technical standards. The Planning and Zoning Commission will provide a recommendation at their meeting (scheduled for May 7, 2014) and because this is a conditional rezoning, City Council will make the final decision on this proposal.

The building is a historic structure with a long history as a quasi-public use, first as a women's club, then a school, and later a church. The Manor Inn, adjoining to the south, was originally a lodging facility and resort and is now used as apartments. Across the street, along Charlotte Street is the Unitarian Universalist Church which has a large structure. The existing building is larger than the surrounding neighborhood houses to the north and east. No changes are proposed for the footprint of the existing structures.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. *That the proposed use or development of the land will not materially endanger the public health or safety.*

The proposed use will meet safety standards or will be updated to meet safety standards.

2. *That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.*

This is an existing historic site and the proposed use will not make large substantial changes to the outside of the structures that change the topography of the site. In addition landscaping will be provided on the site and property line buffers provided along the east and south sides to increase compatibility.

3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.*

The proposed use is not expected to substantially injure the value of adjoining or abutting properties because the elements of new activity are limited by the proposal and will occur primarily indoors. Additional sound proofing measures will be undertaken at the site to contain noise.

4. *That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.*

This is an historic non-residential property that has a long presence on Charlotte Street being one of the original buildings in the neighborhood. The proposed use is limited by the application so that it is in harmony with the area and street in terms of scale, bulk, coverage, density, and character.

5. *That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.*

The proposed use will take an underutilized historic structure that is facing deterioration and adaptively reuse it to create a residence and canine clinic and day care facility with additional investment, repair and code-compliant upgrades. These are general goals that the adopted plans support.

6. *That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.*

The parcel is appropriately located for access and support for urban services and safety providers.

7. *That the proposed use will not cause undue traffic congestion or create a traffic hazard.*

The use is limited to 30 animal client visits per day, that will arrive at staggered times, and will not cause traffic concerns or create a traffic hazard. However, due to the change in the shared parking, there may be some parking on the street in the immediate vicinity.

The comprehensive plan recommends the adaptive reuse of historic structures for new uses and additional investment within the City.

Considerations:

- A historic structure which is currently underutilized will be adaptively reused
- Development standards are being mitigated with landscaping alternatives on-site and parking through a shared arrangement and management of drop-off and pick-up of pets
- The residential component of the proposal will be located along Sunset Parkway which will integrate well with the neighborhood fabric

Based on the above findings and the analysis provided in the report, staff does not feel that this request is reasonable at this point due to limitation of available parking for the use and reliance on other parking sources beyond the UDO remote parking standards. Based on standards in the UDO, the neighborhood has the right to expect that parking demand would be managed off-street and they not be unduly impacted by the traffic generated by this use.

In response to Chairman Goldstein, Mr. Glines explained why the Highway Business District/Conditional Zoning was chosen as the route for this project. In summary, in the Use of Tables of Uses, there is not a Dog Care Use and the closest was a kennel, which was only allowed in the Highway Business District.

Director of Development Services Shannon Tuch responded to Mr. Edmonds when questioned how the prior uses occurred on the site with the RS-4 current zoning.

In response to Mr. Koon, Mr. Glines said that if the Manor were zoned today, their zoning would probably be RM-16 Residential Multi-Family High Density District.

When Mr. Edmonds asked how many residential units could be built on the property, Mr. Glines replied only one residential unit per lot. Ms. Tuch said that almost anything on that property will require a conditional zoning.

In response to Ms. Carter, Mr. Glines said that a number of calls have been received about possible development on the property, some being, but are not limited to: a small restaurant, a small wine shop, yoga studio, a woman-retiree home, and physician's office.

In response to Ms. Carter, Mr. Glines said that the monitoring on the limitations regarding number of dogs, cleanliness, etc. would be on a complaint basis. He explained they would receive a notice of violation and a period of time to correct the violation. If not corrected, they would be fined \$100 per day until the violation is corrected.

Ms. Carter understood that the property is not being taxed at this time because it is owned by a church. When she asked if the residential part would be taxed differently from the commercial part, Mr. Glines did not know the answer to that.

Ms. Haley Wells, attorney representing the developer, said that Mr. Ledyard is the owner of the Charlotte Street Animal Hospital and would like to expand his business. She then spoke about the history of the site. She said Mr. Ledyard is proposing to restore approximately 7,000 square feet fronting Sunset Parkway as a personal residence, and the other portion he is restoring is 6,700 square feet for the canine rehabilitation/social club which will front on Charlotte Street. She noted there is a variety of business in this area and the social club will be a daycare for dogs. There will be no overnight or kennel services and no outdoor running facilities. One member of the staff will be living on site. Animal waste will be collected and disposed of similar to the Charlotte Street Animal Hospital. They also have products that neutralize odors. Mr. Ledyard has met with large groups of neighbors on two occasions and his proposal before the Commission has evolved after receiving their feedback. The neighbors would like the property to be returned to a residential nature; however, the property never had been used as a residence since 1926. Regarding the concern of traffic, she explained how the drop-off and pick-up times will be staggered and that the social club traffic will be first thing in the morning and then at the

end of the day. Rehab patients will be done during non-peak hours. Regarding noise complaints, they have hired an acoustic engineer to remediate those concerns.

Mr. Mark Ledyard, applicant and owner of Charlotte Street Animal Hospital, said that they have a sound engineer to mitigate any sounds heard outside the building. He noted that at his Animal Hospital on Charlotte Street he sees many more animals than 30 a day and has never received any complaints. He explained why he felt the 6 spaces on the site was adequate and the only reason why he was working on a shared-parking agreement with the UUC was for the City's comfort. Since that agreement fell through, his back-up plan would be to have his employees park remotely at the Charlotte Street Animal Hospital. He explained that he is trying to expand his business because he did not have enough room for the rehab portion of his business. He urged the Commission to support his proposal.

In response to Ms. Carter, Mr. Ledyard said that the current owners (Zion Ministries Inc.) still maintains the property.

At 8:49 p.m., Chairman Goldstein opened the public hearing.

The following individuals spoke in support of the canine rehabilitation and social club, for various reasons, some being, but are not limited to: property has been on the market for over 3 years but when prospective buyers see the amount of work needed for renovations, they were not interested; other uses explored were not feasible due to expense to renovate, lack of parking, layout of building, not enough density, not fit in the neighborhood, etc.); wants to see the corner revitalized; will increase the value of the adjoining property owners; existing dogs in the neighborhood bark all day long; dogs will be contained inside; this business is good for the community; applicant already has a small business on Charlotte Street; this will also be the home of the owner and they will cherish their business just as they do their home; need to support local businesses; applicant has shown appreciation for Charlotte Street by participating in ways to make it safer for bicycles, pedestrians and traffic flow; no existing odor at applicant's existing business; applicant will keep the historic structure; property will be back on the City's tax rolls; business is low impact; people should want to live by a renovated structure and not the existing dilapidate structure:

Mr. Jason Burk
Ms. Ginna Reid
Ms. Crystal Coffie
Ms. Denise Fridl
Mr. Shannon Fields
Ms. Grace Curry
Mr. David Love
Ms. Jenny Farmer

The following individuals all supported Mr. Ledyard and his business, however, they spoke in opposition of the canine rehabilitation and social club as a conditional use at this particular location of 1 Sunset Parkway for various reasons, some being, but are not limited to: this is an incompatible use in an historic district; would create a public nuisance in a residential neighborhood; grass is not a good option for dog elimination on a continuing basis; animal shelters typically require 12-15 air exchangers per hour and this will be injected into adjacent neighborhood; dog barking at the social club will encourage neighborhood dogs to bark; this is not the only opportunity to save this historic structure as the price decreases; loss of adjacent neighborhood property values; the Manor Inn has 20 apartments facing 1 Sunset Parkway and they will lose those tenants because they will have to keep their windows closed all year round; this is a commercial encroachment into a residential neighborhood; this conditional zoning looks to be spot zoning; City will be setting a precedent allowing the commercial business to encroach into the residential neighborhood; noise from social club; monitoring will be left up to neighbors; if the business is sold and another owner comes into to run the social club, that owner may be

irresponsible; protect this historic district; lack of parking for use; traffic onto Charlotte Street; this use is not in harmony with the rest of the neighborhood; and should find a use that capitalizes on the bus route:

Mr. Rick Jackson
Mr. Robert Griffin
Ms. Pam Turner
Ms. Laura Livaudais
Ms. Leslie Casse
Mr. Jack Thomson - Board of Director of the Preservation Society of Asheville &
Buncombe County are unanimously opposed to project
Mr. Jim Samsel
Dr. Chuck Bennett
Mr. John Oswald
Mr. Daniel Casse
Ms. Lyn Leslie
Mr. Clay Ballentine
Mr. David Page
Mr. Mike Massengill
Ms. Daphne Ruth Darcy
Mr. Rick Eckerd
Mr. Tom Leslie - Manor Inn Homeowners Association voted (not unanimously) to
oppose project
Mr. David Spicer
Mr. Alan Robinson
Ms. Susannah Watson
Mr. Gary Boyd

Ms. Ann McLellan, representing the Board of Trustees of UUC provided the Commission with the following statement: "The UUC does not have an agreement with Dr. Mark Ledyard and has no plans to enter into an agreement with him regarding parking."

Chairman Goldstein closed the public hearing at 10:28 p.m., and announced a 5-minute recess.

Chairman Goldstein moved to deny the conditional zoning request to allow the operation of a residence and a canine rehabilitation center and day use kennel from RS-4 Residential Single-Family Medium Density District to Highway Business District/Conditional Zoning, and finds the request is not reasonable and is not consistent with the Comprehensive Plan and other adopted plans adopted by the City, based on information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Mr. Edmonds.

Chairman Goldstein felt the applicant has a great passion for his career and has a well thought-out plan; however, he felt that we should protect the neighborhood with the current zoning. The applicant has asked to do something that is not allowed in the residential zoning and has asked for special consideration. He felt that request is fine is it doesn't do harm to the neighborhood. He believed that the proposed use (1) will injure value of the adjoining property owners; (2) is not in harmony, scale and character with the rest of the neighborhood; and (3) does not generally confirm with the Comprehensive Plan and other policies adopted by the City. Restoring the historic structure and returning the property to the tax rolls are important things, but they are only part of what are in adopted City plans. We need to protect our neighborhoods. The Planning & Zoning Commission has spent a lot of time talking about different areas of the City that they want to focus on an area plan to encourage the kinds of development that City Council supports. Charlotte Street was looked at and he felt the commercial corridor ended at Edwin Street.

Ms. Carter was not concerned with the traffic; however, a main concern was that the use is not compatible with the surrounding neighborhood. Additional items of concern were enforcement and monitoring of the use. The conditional zoning runs with the property and the next owner may not be as careful with the property as the applicant. The Comprehensive Plan supports Charlotte Street as an urban neighborhood corridor from I-40 to Edwin Place.

Mr. Koon was concerned that the shared-parking arrangement with the UUC fell through and the Technical Review Committee was not aware of that change. He felt that parking is tight and the remote parking at the Charlotte Street Animal Shelter is not viable.

Mr. Edmonds didn't have a concern about the noise and some increase of traffic; however, he felt that the commercial corridor on Charlotte Street ends with Edwin Place. He felt the property is more residential than business.

The motion made by Chairman Goldstein and seconded by Mr. Edmonds to deny the conditional use request carried unanimously on a 4-0 vote (with Vice-Chair Shriner being recused).

Other Business

Chairman Goldstein announced (1) a mid-month meeting on Thursday, May 15, 2014, at 4:00 p.m., in the First Floor North Conference Room in the City Hall Building to consider a wording amendment regarding Homestay Uses, a wording amendment regarding residential density in commercial districts, a Coxe Avenue residential development, and the Haywood Road Form Based Code document; and (2) the next regular meeting on Wednesday, June 4, 2014, at 5:00 p.m. in the First Floor North Conference Room in the City Hall Building.

Adjournment

At 10:45 p.m., Ms. Carter moved to adjourn the meeting. This motion was seconded by Mr. Koon and carried unanimously on a 4-0 vote.